

STATE OF INDIANA ) IN THE MARION SUPERIOR/CIRCUIT COURT  
 ) SS: 490130405 PLO 00477  
COUNTY OF MARION ) CAUSE NO.

STATE OF INDIANA,

Plaintiff,

v.

WILL & DEAL AUTO SALES, LLC.,  
WILLIAM GARNETT, and  
BENJAMIN F. YATES

Defendants.

FILED

MAR 03 2001

CLERK OF THE  
MARION CIRCUIT COURT

**COMPLAINT FOR INJUNCTION, CONSUMER RESTITUTION,  
COURT-ORDERED TITLE, COSTS, AND CIVIL PENALTIES**

The State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1 *et seq.*, for injunctive relief, consumer restitution, court-ordered title, investigative costs, civil penalties, and other relief.

**PARTIES**

1. The Plaintiff, State of Indiana is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c).

2. At all times relevant to this Complaint, the Defendant, Will & Deal Auto Sales, LLC ("Will & Deal"), was a domestic limited liability corporation created on June 26, 2001, with a principal place of business in Marion County, located at 6103 Massachusetts Street, Indianapolis, Indiana. The Defendant has previously engaged in the retail sale of used motor vehicles.

3. At all times relevant to this Complaint, the Defendant, William Garnett, was an individual engaged in the retail sale of used motor vehicles with a principal place of business in Marion County, located at 6103 Massachusetts Street, Indianapolis, Indiana.

4. At all times relevant to this Complaint, the Defendant, Benjamin F. Yates, was an individual engaged in the retail sale of used motor vehicles with a principal place of business in Marion County, located at 6103 Massachusetts Street, Indianapolis, Indiana.

5. The Defendant, Benjamin F. Yates, at all times relevant to Complaint, has acted as an officer and agent of Will & Deal. The Defendant, William Garnett, at all relevant times, has acted as an agent of Will & Deal. When, in this Complaint, reference is made to any act of the aforementioned Defendants, whether acting individually, jointly, or severally, such allegations shall be deemed to mean that the principals, agents, or employees of the Defendants did or authorized such acts to be done while actively engaged in the management, direction, or control of the affairs of said Defendants and while acting within the scope of their duties, employment, or agency.

### **FACTS**

6. At least since June 25, 2001, the Defendants have engaged in the retail sale of used motor vehicles and sold motor vehicles to consumers.

7. As the alter ego of Will & Deal Auto Sales, LLC, Benjamin F. Yates has been conducting, managing, and controlling the affairs of the company as if it were his own business, and has used the Defendant company for the purpose of defrauding consumers as hereinafter set forth.

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8. At least since February 26, 2002, the Defendants have been licensed as retail used motor vehicle dealers with the Indiana Bureau of Motor Vehicles.

9. At least since May 2, 2002, the Defendants have sold used motor vehicles to consumers.

**Allegations Involving Nicole Davis.**

10. On or about August 3, 2002, the Defendants entered into a contract with Nicole Davis, wherein the Defendants represented that they would sell Davis a 1993 Chevrolet Lumina Euro, VIN 2G1WN54T9P9236104, at a price of Two Thousand Six Hundred Twenty Five Dollars (\$2,625.00), of which Davis received One Thousand Dollars (\$1,000.00) credit toward a down payment, as a result of a trade-in.

11. The Defendants did not possess the title for the 1993 Chevrolet Lumina Euro on the date of sale.

12. The Defendants failed to provide Davis with a proper dealer affidavit, as required by Ind. Code § 9-17-3-3.5.

13. The Defendants failed to deliver the vehicle title to Davis at the time of sale or delivery of the 1993 Chevrolet Lumina Euro.

14. The Defendants failed to deliver the vehicle title to Davis within twenty-one (21) days after the date of purchase.

15. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented to Davis that the title would be delivered within a reasonable period of time.

16. The Defendants have yet to either deliver the certificate of title, or to provide a refund to Davis.

**Allegations Involving Tara Carter.**

17. On or about September 16, 2002, the Defendants entered into a contract with Tara Carter, wherein the Defendants represented that they would sell Carter a 1996 Pontiac Grand Am SE, VIN 1G2NE52T4TC848921, at a price of Two Thousand Six Hundred and Thirty Five Dollars (\$2,635.00), which Carter paid One Thousand Dollars (\$1,000.00) as a down payment.

18. The Defendants did not possess the title for the 1996 Pontiac Grand Am SE on the date of sale.

19. The Defendants failed to provide Carter with a dealer affidavit, as required by Ind. Code § 9-17-3-3.5.

20. The Defendants failed to deliver the vehicle title to Carter at the time of sale or delivery of the 1996 Pontiac Grand Am SE.

21. The Defendant failed to deliver the vehicle title to Carter within twenty-one (21) days after the dates of purchase.

22. On or about October 18, 2002, the Defendants prepared a new Used Vehicle Order for the 1996 Pontiac Grand Am SE and represented that this was necessary in order to give Ms. Carter an additional interim plate.

23. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented to Carter that the title would be delivered within a reasonable period of time.

24. The Defendants have yet to either deliver the certificate of title, or to provide a refund to Carter.

**Allegations Involving Joneeka Jamison.**

25. On or about September 18, 2002, the Defendants entered into a contract with Joneeka Jamison, wherein the Defendants represented that they would sell Jamison a 1992 Pontiac Grand Am SE, VIN 1G2NE5437NM025653, at a price of One Thousand Nine Hundred Dollars (\$1,900.00), which Jamison paid One Thousand Dollars (\$1,000.00) as a down payment.

26. The Defendants did not possess the title for the 1992 Pontiac Grand Am SE on the date of sale.

27. The Defendants failed to deliver the vehicle title to Jamison at the time of sale or delivery of the 1992 Pontiac Grand Am SE.

28. The Defendants failed to deliver the vehicle title to Jamison within twenty-one (21) days after the date of purchase.

29. The Defendants failed to deliver the vehicle title to Jamison within twenty-one (21) days after the dates of purchase.

30. On or about October 18, 2002, the Defendants prepared a new Used Vehicle Order for the 1992 Pontiac Grand Am SE and represented that this was necessary in order to give Ms. Jamison an additional interim plate.

31. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented to Jamison that the title would be delivered within a reasonable period of time.

32. The Defendants have yet to either deliver the certificate of title, or to provide a refund to Jamison.

**COUNT I - VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT**

33. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 32 above.

34. The transactions identified in paragraphs 10, 17, and 22 are "consumer transactions" as defined by Ind. Code § 24-5-0.5-2(1).

35. The Defendants, Will and Deal Auto Sales, LLC, William Garnett, and Benjamin F. Yates, are "suppliers" as defined in Ind. Code § 24-5-0.5-2(3).

36. The Defendant's representations to Davis, Carter, and Jamison, regarding the characteristics or benefits of the vehicle transactions, when the Defendants knew or reasonably should have known that the vehicles did not possess such, as referenced in paragraphs 10, 17, 22, 25, and 30, constitute violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(1).

37. The Defendant's representations to Davis, Carter, and Jamison, that they would be able to deliver title or complete the subject of the consumer transaction within a reasonable period of time when the Defendants knew or reasonably should have known they could not, as referenced in paragraphs 15, 23, and 31 constitute violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(10).

**COUNT II – KNOWING AND INTENTIONAL VIOLATIONS OF  
THE DECEPTIVE CONSUMER SALES ACT**

38. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 37 above.

39. The misrepresentations and deceptive acts set forth in paragraphs 10, 15, 17, 22, 23, 25, 30, and 31 were committed by the Defendants with knowledge and intent to deceive.

## RELIEF

**WHEREFORE**, the Plaintiff, State of Indiana, requests that the Court enter judgment against the Defendants, Will and Deal Auto Sales, LLC, William Garnett, and Benjamin F. Yates, enjoining the Defendants, their agents, representatives, employees, successors, and assigns from the following:

- a. Selling motor vehicles without delivering titles as required by Ind. Code § 9-17-3-3;
- b. Representing expressly or by implication that the subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have, which the Defendants know or reasonably should know it does not have;
- c. Representing expressly or by implication that the Defendants are able to deliver or complete the subject of a consumer transaction within a reasonable period of time, when the Defendants know or should reasonably know they could not.

**AND WHEREFORE**, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendant for the following relief:

- a. Cancellation of the Defendant's contracts with Davis, Carter, and Jamison pursuant to Ind. Code § 24-5-0.5-4(d);
- b. Consumer restitution pursuant to Ind. Code §24-5-0.5-4(c)(2), for reimbursement of all deposits, down payments and other funds remitted by the consumers listed above in paragraphs 10, 17, and 25 for their vehicle in an amount to be determined at trial, **or in the alternative**, an order directing the

Indiana Bureau of Motor Vehicles to issue a motor vehicle title for the vehicles identified in paragraphs 10, 17, and 25 to those consumers and/or their lien holders;

c. Costs pursuant to Ind. Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;

d. On Count II of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-4(g), for the Defendants' knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana;

e. On Count II of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-8, for the Defendants' intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana; and

f. All other proper relief.

Respectfully submitted,

STEVE CARTER  
Indiana Attorney General  
Atty. No. 4150-64

By: 

Terry Tolliver  
Deputy Attorney General  
Atty. No. 22556-49

Office of the Attorney General  
Indiana Government Center South  
302 W. Washington, 5th Floor  
Indianapolis, IN 46204  
Telephone: (317) 233-3300